IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 27609 of 2005(J)

PETITIONER:

K.MURALEEDHARAN, T.C.25/2867,
CHEKKALAVILAKAM, VANCHIYOOR.P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.A.INEES

RESPONDENTS:
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1. THE REGIONAL TRANSPORT AUTHORITY,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY.

2. SMT. SHABEELA BEEVI,
RAGAM MANZIL, PANACHAMOODU,
PARASALA, TRIVANDRUM.

3. SRI. V.SREEKUMAR,
T.C.3/2783, GURUVIHAR, PATTOM PALACE.P.O.,
THIRUVANANTHAPURAM.

R2 AND R3 BY ADV. SRI.K.V.GOPINATHAN NAIR
R1 BY GOVERNMENT PLEADER SMT. SMITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22/03/2007, ALONG WITH WPC NO. 27935 OF 2005 WPC NO. 31645 OF 2005
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 27609/2005)

PETITIONER'S EXHIBITS:

EXT.P1 ROUGH SKETCH OF THE ROUTES OF THE PETITIONER AND RESPONDENTS 2AND 3

EXT.P2 TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT DATED 4.10.2002 IN ITEM NO.14

EXT.P3 TRUE COPY OF THE JUDGMENT OF THE STATE TRANSPORT APPELLATE TRIBUNAL IN M.V.A.A.NO. 717 OF 2002 DATED 1.10.2004

EXT.P4 TRUE COPY OF THE COMMON JUDGMENT OF THIS HON'BLE HIGH COURT IN WPC NOS. 32790 AND 32799 OF 2004 AND CONNECTED CASES DATED 15.12.2004

EXT.P5 TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT DATED 5.4.2005 IN ITEM NO.2 REJECTING THE APPLICATION OF THE 2ND RESPONDENT.

EXT.P6 TRUE COPY OF THE AFFIDAVIT IN SUPPORT OF THE IMPLEADING PETITION FILED BY THE PETITIONER IN M.V.A.A.NO. 370 OF 2005 DATED 18.8.2005

EXT.P7 TRUE COPY OF THE JUDGMENT IN M.V.A.A.NO. 370/2005 DATED 24.8.2005 OF THE STATE TRANSPORT APPELLATE TRIBUNAL.

EXT.P8 TRUE COPY OF THE JUDGMENT IN M.V.A.A.NO. 372/05 DATED 24.8.2005 OF THE STATE TRANSPORT APPELLATE TRIBUNAL.

RESPONDENTS 2 AND 3'S EXHIBITS:

EXT.R2(a) TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT DATED 5.4.2005 GRANTING VARIATION OF PERMIT ON THE ROUTE THIRUVALLAM-PONGUMOODU IN RESPECT OF STAGE CARRIAGE KL-01/E 7745

EXT.R2(b) TRUE COPY OF THE PROCEEDINGS OF THE SECRETARY, RTA, THIRUVANANTHAPURAM ISSUING VARIED PERMIT ON CITY ROUTE CHIRAMUKKU-MEDICAL COLLEGE DATED 13.1.1998

EXT.R2(c) TRUE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT GRANTING VARIATION OF PERMIT ON THE SITY ROUTE A.K.G. NAGAR KUNDAMANBHAGAM DATED 26.3.2002

EXT.R2(d) TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT GRANTING VARIATION OF PERMIT ON THE CITY ROUTE MEDICAL COLLEGE-VAZHAYIL DATED 26.3.2002

EXT.R2(e) TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT GRANTING VARIATION OF PERMIT ON THE CITY ROUTE AMBALATHARA-PONGUMOODU DATED 19.7.2001

EXT.R2(f) TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT GRANTING VARIATION OF PERMIT ON THE CITY ROUTE POONTHURA-POONGUMOODU DATED 27.5.2003

EXT.R2(g) TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT GRANTING VARIATION OF PERMIT ON THE CITY ROUTE POONGUMOODU-MANACAUD DATED 5.4.2005

EXT.R2(h) TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT GRANTING VARIATION OF PERMIT ON THE CITY ROUTE POONGUMOODU-KONCHIRAVILA DATED 5.4.2005

TRUE COPY

P,.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 27609, 27937 & 31645 OF 2005

Dated this the 22nd day of March, 2007

JUDGMENT

The challenge in these three connected cases is against the order of the STAT in M.V.A.A.Nos. 370 and 372 of 2005 dated 24.8.2005 upholding the claim of variation of route by the appellant in those cases. While WPC 27937 of 2005 and WPC 27609 of 2005 are filed by two stage-carriage operators maintaining the stand that they are affected in as much as they are operating almost in the same route as the grantee, WPC 31645 of 2005 is filed by Passengers' Association contending that variation granted is not convenient to the travelling public.

2. I have herd counsel appearing for the petitioners in all the WPCs., counsel appearing for the contesting respondents, Government Pleader and standing counsel for KSRTC.

3. On going through the order of the STAT, I find the STAT has gone by the recommendation of the Motor Vehicle Inspector who has reported that variation sought for is beneficial to the public and if

variation is granted, the same will avoid operation of vehicles through the busy National Highway NH 47. So far as the claim of contesting respondents is concerned, they are competitors in business along with grantee and they have grievance because of overlapping of the route operated by them and the grantee. However, no operator can claim exclusive right to operate in a route. The dispute among the operators in the same route or almost in the same route should be settled by avoidance of time clash. Therefore the demand of contesting operators to exclude the grantee from the route has only to be rejected. Moreover it is seen that the contesting operators are not operating exactly in the same route, even though there is substantial overlapping. Ever since the filing of the WPCs. that is for the last over three years all the operators are operating in the variation granted route viably which is evident from their continued operation. So far as claim of travelling public is concerned, I do not find any bona fide because the Motor Vehicle Inspector pointed out that passengers will be benefitted in the variation granted. Moreover, anyone familiar with Trivandrum City very well knows that variation granted is through busy areas and the

grantee's operation touches one main Railway Station, and two Hospitals, including Medical College Hospital, visited by large number of patients and public. Therefore I find no ground to interfere with the finding of the STAT based on facts for granting variation of route which is consistent with Rule 145(6) of the Kerala Motor Vehicles Rules and Section 83 of the M.V. Act.

WPs are therefore dismissed.

(C.N.RAMACHANDRAN NAIR)
Judge